

The Organization of Agreement States (OAS) appreciates the opportunity to provide comments to the Commission on Agreement State perspectives on complex decommissioning actions. Remarks at this time were originally scheduled to be delivered by Mr. Gary Butner, Acting Branch Chief, California Radiologic Health Branch. Unfortunately, OAS found out late Friday afternoon that Mr. Butner was not able to attend this briefing today, so the remarks have been provided by the Organization of Agreement States Chair, Mr. Paul Schmidt to be read into the record.

While Agreement States face the same technical issues the NRC faces in decommissionings, States also face jurisdictional and political issues that can be considerably different in degree than the issues faced by NRC.

Jurisdictional issues arise, for example, at DOE facilities. While Agreement States, under their Atomic Energy Act status, clearly do not have jurisdiction over DOE activities, jurisdictional questions arise with respect to residual contamination remaining at the site once DOE leaves the facility and the land reverts to private ownership. There are also questions as to the jurisdiction over potential off-site contamination resulting from legal or accidental effluent releases, and from operational releases of small amounts of radioactively contaminated materials using criteria similar to that in NRC Regulatory Guide 1.86. While state agencies may have jurisdiction in these latter instances under EPA delegated authority or state law, this matter is not clear and can cause significant delays in a decommissioning action, as well as undermine the public confidence.

On the political front, state and local political bodies, and therefore regulatory agencies, are much more susceptible than their larger federal counterparts to the influence of special interest groups. Although such “local control” is one of the benefits of our federalist system, it can be a weakness as well, when what are essentially technical issues become re-packaged as policy issues, which are often driven by special interests and may not be based on sound science.

As an example, the California program has experienced considerable opposition to its decommissioning process within the local and legislative communities resulting to a large extent from the disparity that exists among EPA, DOE and NRC decommissioning approaches and philosophies. It was this issue that influenced the introduction of a series of legislative bills in California in 2001-2004 calling for very conservative restrictions on the transfer or disposal of debris or soil, including soil left in place if there were any measurable residual radioactive contamination. The bills failed, but the controversy has continued.

A major contributing factor to this ongoing controversy is the lack of consensus at the federal level, primarily with respect to the appropriate level of acceptable dose and risk. While the NRC regulations contain a normal upper bound of 25 millirem per year on decommissioned facilities, the NRC-EPA 2002 Memorandum of Understanding (MOU) appears to create a default limit of essentially 5 millirem per year, and the EPA in independent actions relies on the risk range of  $1\text{E-}6$  to  $1\text{E-}4$ , which is essentially 0.05 to 5 millirem per year. EPA also uses a different approach to achieving its cleanup criteria than NRC and DOE. These differences have been exploited in the public and legislative arenas by special interests to demonstrate that there is no agreement on what is “safe,” and the special interests have urged that only the most conservative agency criterion, which is  $1\text{E-}6$  risk, or 0.05 mrem per year, be considered acceptable. The continued lack of consensus among federal agencies tends to undermine public and legislative confidence in the decommissioning process overall.

Understanding that it does not necessarily fall to the Commission to solve these problems, we nevertheless suggest that NRC may contribute to the solution by continuing to engage its federal partners in discussions on the topic of decommissioning, and also on codification of solid material release criteria. If the federal agencies cannot achieve reasonable consensus on what is safe for unrestricted use in the public domain, and how that determination is made, the public and legislators will continue to be susceptible to arguments to accept only the most conservative of the conflicting criteria.

The MARSSIM process is a good example of a sensitive technical issue in this area that

was well coordinated among numerous federal agencies. Likely because of this coordination, the technical process addressed by MARSSIM has not been subject to a divide-and-conquer effort to sway public and legislative opinions, at least not in our experience.

We appreciate the protracted negotiations that resulted in the MOU between the EPA and NRC on decommissionings, but we believe the MOU did not bring the clarity and finality to the decommissioning process that was originally intended. We respectfully submit that it's time for all of us to go back to the table, and try to come to national consensus on these issues.

Thank you.